

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1258 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1-5 No

BHUROMAL KALYANDAS

Versus

CHAMANLAL KANJI

Appearance:

MR AM MEHTA for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/04/98

ORAL JUDGEMENT

Rule. By the impugned order dated 18.6.1997 the Assistant Judge, Jamnagar has allowed the plaintiff's application under Order 6 Rule 17 of the C.P.C. and granted amendment to the plaint. The plaintiff filed suit as an executor and sole trustee of the deceased Vrajkuvarben Mohanlal Trust. However, it was titled as 'Chamanlal Kanji', trustee of Vrajkuvarben Mohanlal Trust. In para 1 of the suit it is stated that the

plaintiff is the executor and sole trustee of the deceased Vrajkuvarben trust. The said suit was decreed. The defendant filed an appeal against the said judgement and decree. During the pendency of the appeal the said application under Order 6 Rule 17 was filed. By way of amendment the plaintiff sought amendment for correcting the mistake in the description of the plaintiff by substituting Vrajkuvarben Mohanlal Trust. The appellate court found that it was simply a case of misdescription of the plaintiff in the cause title and as such granted the amendment.

Mr. Mehta learned counsel appearing for the petitioner contends that the amendment changes the entire complexion of the suit. He has submitted that a specific objection was taken that the suit was not maintainable at the instance of the trustee. An issue was framed in this regard. Though no finding has been given by the trial court on that issue, the thrust of the contention is that the learned judge has exceeded the jurisdiction in granting the amendment which changes the entire complexion of the suit. The learned counsel has referred to the decision in the case of S.N. DUTT VS. UNION OF INDIA reported in AIR 1961 SC 1449. In the said case notice under Section 80 of C.P.C. was given by M/s. S.N. Dutt and Co. but the suit was filed by S.N. Dutt, sole proprietor of a business. It was held that the person giving the notice was not the same person suing and that therefore there was no compliance of Section 80 of C.P.C. On the strength of this authority the learned counsel has contested that the suit has not been filed in the name of the trust and the amendment will frustrate the defence taken by the petitioner that the suit was not maintainable only at the instance of one of the trustees. In my view there is no substance in that contention raised by the petitioner. The description given in the suit reading with para 1 of the plaint clearly makes that the suit has been filed by Chamanlal Kanji as a sole executor and trustee of the trust. Therefore, it is only a case of mis-description of which the defendant cannot take advantage. The learned counsel has referred to the decisions in the case of JAYADEO MALLIKARJUN MAINDARGI VS. BRAHMIN SAMAJ SEVA SANGHA reported in 1997 Bom. R.C. 490, AISHA VS. STATE OF JAMMU AND KASHMIR reported in AIR 1978 J & K 34, RAMANLAL AMBALAL PATEL VS. M/S. HINA INDUSTRIES reported in 1993(1) G.L.R. 820. I have gone through all these judgements and none of the decisions advances the case of the petitioner. It is also contended by the learned counsel that the authorities cited by him at bar have not been discussed by the learned judge. These authorities have even not been referred to in the order. The learned judge has

referred to the decision of this court in the case of Ramanlal Ambalal Patel Vs. M/s. Hina Industries (supra) wherein this court has held that there is a duty of the court to refer to the authorities cited before it. That was a case where the suit filed under Section 5 of the Specific Relief Act was finally decided. It is of course, true that when a matter is finally decided the court should deal with all the contentions and also deal with the authorities referred. However, it is not necessary to deal with all the authorities for disposing of an application at the interim stage. At the interim stage the court should give a brief order and should avoid writing long judgements. In view of this, I do not find any error of jurisdiction which calls interference by this court in exercise of power under Section 115 C.P.C. The revision application is rejected. Rule is discharged.

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